

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In Re: The Revocation of the License
of: Barbara Miller
1509 North 12th Street
Princeton, MN 55371
To Provide Family Day Care Under
Minnesota Rules, parts 9502.0300 to
9502.0445

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Beverly J. Anderson at 9:30 a.m. at the Mille Lacs County Courthouse Square Building, Milaca, Minnesota.

Jennifer A. Fahey, Mille Lacs County Attorney, Courthouse Square, 525-2nd Street, S.E., Milaca, Minnesota 56533, appeared on behalf of Mille Lacs County and the Department of Human Services. The Licensee, Barbara Miller, appeared personally and was represented by James Jay Renniecke, Magee & Renniecke, 24 Dell Place, Minneapolis, Minnesota 55403. The record closed on February 22, 1999.

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations of the Administrative Law Judge. Under Minn. Stat. 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Michael O'Keefe, Commissioner, Minnesota Department of Human Services, 2nd Floor Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether the Licensee's license to provide family day care should be revoked based upon the fact that her husband, who resides with Ms. Miller in the day care home, was identified as a perpetrator in a determination of maltreatment of a minor and a preponderance of the evidence indicates: (1) an act that meets the definition of maltreatment in Minnesota

Statutes, § 626.556, subdivision 10e, paragraph (a), occurred; (2) the subject committed the maltreatment; and (3) the maltreatment was serious or recurring.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Licensee is a licensed family day care provider in Mille Lacs County and has been a licensed day care provider for over 17 years. The Licensee provides day care at her residence where she resides with her husband, David Miller, and her children, David Miller, Jr., age 25, Stephanie Miller, age 15, and Kelsey Miller, age 5.
2. On April 24, 1998, Mille Lacs County Family Services received a report alleging that David Miller, the spouse of Barbara Miller, had sexually abused his daughter Stephanie, born November 19, 1983. In an interview with Stephanie Miller by the Child Protection Division of Mille Lacs County Family Services, she reported her father touched her in the vaginal area under her clothing on about ten different occasions when she was ten years old.
3. Upon completion of the investigation, the Mille Lacs County Family Services determined that maltreatment occurred.
4. In correspondence dated May 26, 1998 to Mr. Miller from Mille Lacs County Family Service and Welfare Department, Mr. Miller was notified of disqualification from direct contact with persons served by Department of Human Services (DHS) licensed programs due to being identified as the perpetrator in a determination of serious maltreatment of a minor.
5. In correspondence dated May 26, 1998 to the Licensee from Mille Lacs County Family Service and Welfare Department, the Licensee was notified that David Miller had met a disqualification factor.
6. The Licensee and family member requested reconsideration of the disqualification. In correspondence dated September 10, 1998, the Licensee and family member were notified that the disqualifications had not been set aside.
7. An Order for Revocation was issued on November 12, 1998 by the Minnesota Department of Human Services based on disqualification factors under Minnesota Rules, part 9502.0335, subp. 6.
8. The Licensee requested a contested case hearing under Minnesota Statutes Chapter 14, and a contested hearing was scheduled by Notice of and Order for Hearing dated December 2, 1998 by Jerry Kerber, Director, Division of Licensing, Minnesota Department of Human Services.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. 14.50, 245A.08.
2. The Notice and Order for Hearing issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.
3. Minn. Stat. 245A.04, subd. 3(e), provides that a licensee who requests reconsideration from the Commissioner is not entitled to a contested case hearing if the Commissioner affirms the disqualification. In this case, the Commissioner affirmed the disqualification. It is concluded, therefore, that the Administrative Law Judge does not have jurisdiction to reconsider the issue of disqualification.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Department's administrative decision revoking the Licensee's family day care license be **AFFIRMED**.

Dated this 19th day of March, 1999

BEVERLY J. ANDERSON
Administrative Law Judge

MEMORANDUM

There is no dispute of the facts as stated above and as stated in the Notice of and Order for Hearing. The Licensee does dispute the revocation of her license based on her contention that she does not pose a risk or harm any of the children in her day care program. Although the Licensee admits the maltreatment was serious and meets the statutory definition, she disputes the

revocation because the maltreatment occurred over five years ago by a family member at a time when there were no other family members or day care children in the home. The Licensee believes that less restrictive alternatives available which would allow her to continue to provide family day care should be considered.

BJA

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.